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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

11 RONALD JAMES M.,¹

12 Plaintiff,

13 v.
14

15 ANDREW M. SAUL,² Commissioner
16 of Social Security,

17 Defendant.
18

} Case No. 5:18-cv-01740-JDE

} MEMORANDUM OPINION AND
} ORDER

19 Plaintiff Ronald James M. (“Plaintiff”) filed a Complaint on August 8,
20 2018, seeking review of the Commissioner’s denial of his application for
21 disability insurance benefits (“DIB”) and supplemental security income
22 (“SSI”). The parties filed a Joint Stipulation (“Jt. Stip.”) regarding the issues in
23 dispute on May 8, 2019. The matter now is ready for decision.

24
25 ¹ Plaintiff’s name has been partially redacted in accordance with Fed. R. Civ.
26 P. 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration
and Case Management of the Judicial Conference of the United States.

27 ² Andrew M. Saul, now Commissioner of the Social Security Administration,
28 is substituted as defendant for Nancy A. Berryhill. See Fed. R. Civ. P. 25(d).

1 I.

2 BACKGROUND

3 Plaintiff filed applications for DIB and SSI on February 20, 2015,
4 alleging disability commencing on January 12, 2010. Administrative Record
5 (“AR”) 198-206. After his applications were denied initially (AR 116-21) and
6 on reconsideration (AR 125-30), Plaintiff requested an administrative hearing
7 (AR 131-33). Plaintiff initially appeared without counsel for a hearing on
8 March 27, 2017 before an Administrative Law Judge (“ALJ”), but, following a
9 colloquy, Plaintiff advised he desired counsel and the hearing was adjourned.
10 AR 34-46. On August 2, 2017, Plaintiff again appeared before the ALJ, with
11 counsel, and testified. AR 47-65. Plaintiff requested that the disability onset
12 date be amended to August 13, 2013, which the ALJ approved. AR 50.

13 On September 18, 2017, the ALJ found Plaintiff was not disabled (AR
14 16-28), finding Plaintiff had not engaged in substantial gainful employment
15 since August 13, 2013 and suffered from the following severe impairments:
16 disorder of the right clavicle, disorder of the lumbar, disorder of the shoulder,
17 disorder of the wrists, carpal tunnel syndrome, and disorder of the right knee.
18 AR 18. The ALJ found Plaintiff did not have an impairment or combination of
19 impairments that met or medically equaled a listed impairment and had the
20 residual functional capacity (“RFC”) to perform light work, “limited to
21 frequent but not continuous bilateral fingering and handling and frequent but
22 not continuous right upper extremity overhead reaching.” AR 19-20. The ALJ
23 found Plaintiff was not capable of performing his past relevant work, but
24 considering his age, education, work experience, and RFC, could perform
25 other jobs existing in significant numbers in the national economy, meaning
26 Plaintiff was thus not under a “disability” as defined in the Social Security Act.
27 AR 27. On July 23, 2018, the Appeals Council denied Plaintiff’s request for
28 review, making the ALJ’s decision the Commissioner’s final decision. AR 1-6.

II. LEGAL STANDARDS

A. Standard of Review

Under 42 U.S.C. § 405(g), district courts may review decisions to deny benefits. Such decisions will be upheld if they are free from legal error and supported by substantial evidence in the record. Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (as amended); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion; it is more than a scintilla, but less than a preponderance. Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). In making that determination, a reviewing court “must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). “If the evidence can reasonably support either affirming or reversing,” the reviewing court “may not substitute its judgment” for that of the Commissioner. Id. at 720-21; see also Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (“Even when the evidence is susceptible to more than one rational interpretation, [the court] must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.”). Lastly, even if an ALJ errs, the decision will be upheld if the error is harmless (id. at 1115), that is, if it is “inconsequential to the ultimate nondisability determination,” or if “the agency’s path may reasonably be discerned, even if the agency explains its decision with less than ideal clarity.” Brown-Hunter, 806 F.3d at 492 (citation omitted).

B. Standard for Determining Disability Benefits

When the claimant's case has proceeded to consideration by an ALJ, the ALJ conducts a five-step sequential evaluation to determine at each step if the claimant is or is not disabled. See *Molina*, 674 F.3d at 1110. First, the ALJ

1 considers whether the claimant currently works at a job that meets the criteria
2 for “substantial gainful activity.” Id. If not, the ALJ proceeds to a second step
3 to determine whether the claimant has a “severe” medically determinable
4 physical or mental impairment or combination of impairments that has lasted
5 for more than twelve months. Id. If so, the ALJ proceeds to a third step to
6 determine whether the claimant’s impairments render the claimant disabled
7 because they “meet or equal” any of the “listed impairments” set forth in the
8 Social Security regulations at 20 C.F.R. Part 404, Subpart P, Appendix 1. See
9 Rounds v. Comm’r Soc. Sec. Admin., 807 F.3d 996, 1001 (9th Cir. 2015).

10 If the claimant’s impairments do not meet or equal a listed impairment,
11 before proceeding to the fourth step, the ALJ assesses the claimant’s RFC, that
12 is, what the claimant can do on a sustained basis despite the limitations from
13 his impairments. See 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); Social
14 Security Ruling 96-8p. After determining the RFC, the ALJ proceeds to the
15 fourth step and determines whether the claimant has the RFC to perform his
16 past relevant work, either as the claimant “actually” performed it in the past,
17 or as that same job is “generally” performed in the national economy. See
18 Stacy v. Colvin, 825 F.3d 563, 569 (9th Cir. 2016).

19 If the claimant cannot perform past relevant work, the ALJ proceeds to a
20 fifth and final step to determine whether, based on the claimant’s RFC, age,
21 education, and work experience, any jobs exist in significant numbers in either
22 the national or regional economies that the claimant can perform. See Tackett
23 v. Apfel, 180 F.3d 1094, 1100-01 (9th Cir. 1999). If such jobs exist, the
24 claimant is not disabled. If no such jobs exist and the claimant meets the
25 duration requirement, the claimant is disabled. Id. at 1099.

26 The claimant generally bears the burden at each of steps one through
27 four to either disability or that the requirements to proceed to the next step
28 have been met, and the claimant bears the ultimate burden to show disability.

1 See, e.g., Molina, 674 F.3d at 1110; Johnson v. Shalala, 60 F.3d 1428, 1432
2 (9th Cir. 1995). However, at Step Five, the ALJ has a “limited” burden of
3 production to identify representative jobs that the claimant can perform and
4 that exist in “significant” numbers in the economy. See Hill v. Astrue, 698
5 F.3d 1153, 1161 (9th Cir. 2012); Tackett, 180 F.3d at 1100.

6 III.

7 DISCUSSION

8 The parties present two disputed issues (Jt. Stip. at 4):

9 Issue No. 1: Did the ALJ properly consider the medical evidence; and

10 Issue No. 2: Did the ALJ properly consider Plaintiff’s subjective
11 symptom statements.

12 A. Objective Medical Evidence

13 With respect to Issue No. 1, Plaintiff contends the ALJ failed to properly
14 consider the opinions of treating physicians James Matiko, M.D. (“Dr.
15 Matiko”) and Raymond Leung, M.D. (“Dr. Leung”) and examining physician
16 Donald D. Kim, M.D (“Dr. Kim”). Jt. Stip. at 5-8.

17 1. Applicable Law

18 In assessing an RFC, an ALJ must consider all relevant evidence in the
19 record, including medical records and “the effects of symptoms, including
20 pain, that are reasonably attributable to the medical condition.” Robbins v.
21 Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006) (citation omitted). In
22 reaching conclusions based upon medical evidence, an ALJ must discuss
23 significant and probative medical evidence and, if rejected or discounted,
24 explain why such evidence is rejected or discounted. See id.; Brown-Hunter,
25 806 F.3d at 492 (holding federal courts “demand that the agency set forth the
26 reasoning behind its decisions in a way that allows for meaningful review”);
27 Vincent v. Heckler, 739 F.2d 1393, 1395 (9th Cir. 1984) (holding ALJ must
28 discuss significant and probative evidence and explain why it was rejected).

1 “There are three types of medical opinions in social security cases: those
2 from treating physicians, examining physicians, and non-examining
3 physicians.” Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d 685, 692 (9th
4 Cir. 2009); see also 20 C.F.R. § 416.902. “As a general rule, more weight
5 should be given to the opinion of a treating source than to the opinion of
6 doctors who do not treat the claimant.” Lester v. Chater, 81 F.3d 821, 830 (9th
7 Cir. 1995). “The opinion of an examining physician is, in turn, entitled to
8 greater weight than the opinion of a nonexamining physician.” Id.

9 “[T]he ALJ may only reject a treating or examining physician’s
10 uncontradicted medical opinion based on clear and convincing reasons”
11 supported by substantial evidence in the record. Carmickle v. Comm’r, Sec.
12 Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citation omitted). “Where
13 such an opinion is contradicted, however, it may be rejected for specific and
14 legitimate reasons that are supported by substantial evidence in the record.”
15 Carmickle, 533 F.3d at 1164 (citation omitted). “The ALJ need not accept the
16 opinion of any physician . . . if that opinion is brief, conclusory, and
17 inadequately supported by clinical findings.” Bray v. Comm’r of Soc. Sec.
18 Admin., 554 F.3d 1219, 1228 (9th Cir. 2009).

19 2. Analysis

20 a. Dr. Matiko

21 Plaintiff directs the Court to a January 2011 report by Dr. Matiko, a
22 treating physician, that states Plaintiff “was to have no use of his bilateral upper
23 extremities” (Jt. Stip. at 5 [citing AR 526]) and argues the ALJ erred in not
24 crediting that opinion. Id. at 6-7. The ALJ did not name Dr. Matiko in his
25 decision, but he did recite having “read and carefully considered the submitted
26 treatment records dated from January 2011 to June 2017,” including “records
27 prior to the alleged onset date,” and cites to the portion of the record that
28 includes Dr. Matiko’s January 2011 report. AR at 21. The Commissioner

1 argues that Dr. Matiko's opinion was not "significant and probative evidence"
2 as it was rendered well before the alleged onset date of August 13, 2013, and
3 thus was not required to be discussed by the ALJ. Jt. Stip. at 9. n.3.

4 The Court agrees with the Commissioner. As noted, although an ALJ
5 must consider all relevant evidence in the record in assessing an RFC, the ALJ
6 is only required to discuss "significant and probative medical evidence" in his
7 decision. Robbins, 466 F.3d at 883; Brown-Hunter, 806 F.3d at 492. The
8 opinion of Dr. Matiko cited by Plaintiff was rendered more than two and a half
9 years before the alleged onset date. Further, although Plaintiff cites Dr.
10 Matiko's January 2011 report, by February 15, 2012, still roughly a year and a
11 half before the alleged onset date and at a time when Plaintiff was "working at
12 a thrift store doing light duty," Dr. Matiko had substantially revised his opinion
13 recommending far less restrictive work limitations. See AR 480, 482 (limiting
14 "[n]o repetitive forceful gripping or grasping with both upper extremity and no
15 heavy lifting"). Further, the ALJ had before him, and he "carefully considered"
16 the substantial medical evidence from within the relevant period and discussed
17 that evidence in detail in his decision. See AR 21-26.

18 Dr. Matiko's January 2011 opinion refenced by Plaintiff in the Joint
19 Stipulation, rendered more than two and a half years before the alleged onset
20 date and superseded by a far less restrictive opinion by Dr. Matiko also
21 rendered outside the relevant period, was neither probative nor significant to
22 the relevant inquiry before the ALJ. The ALJ did not err in rejecting such
23 evidence and did not err in declining to further explain why he rejected it. See,
24 e.g., Vincent, 739 F.2d at 1395 (ALJ properly rejected opinion of doctor who
25 had treated claimant several years before relevant period and had not examined
26 him in several years); Gunderson v. Astrue, 371 F. App'x 807, 809 (9th Cir.
27 2010) (unpublished) (ALJ did not err by discounting medical opinion of doctor
28 who conducted examination "nearly two years before the alleged onset date of

1 [claimant]’s disabilities”); Vanderslice v. Berryhill, 2017 WL 2889371, at *3
2 (W.D. Wash. July 6, 2017) (ALJ properly rejected opinions of doctor because
3 they were given “some” two years before the relevant period); Linda L. v.
4 Berryhill, 2019 WL 2413009, at *4 (C.D. Cal. June 7, 2019) (ALJ did not err in
5 finding treatment notes and an MRI predating the onset date by more than a
6 year were “not probative”).

7 b. Dr. Leung and Dr. Kim

8 On November 30, 2015, Dr. Leung opined Plaintiff could return to work
9 with the restriction that Plaintiff not use either of his hands. AR 371. However,
10 starting on January 25, 2016 and continuing monthly thereafter, excluding
11 June, until September 2016, Dr. Leung opined Plaintiff should remain off work
12 due to what was variously described as chronic pain, bilateral cubital tunnel
13 syndrome, bilateral hand derangement, and flexor tendonitis. AR 361-70. On
14 October 24, 2016, Dr. Leung opined Plaintiff was permanently totally
15 disabled. AR 572. On June 19, 2017, Dr. Leung opined Plaintiff could “never”
16 lift or carry any weight, can never reach, handle, finger, feel, push or pull with
17 either hand. AR 579, 581.

18 On August 13, 2013, Dr. Kim diagnosed Plaintiff with a variety of carpal
19 tunnel and hand and finger related maladies. AR 589. On October 12, 2014,
20 Dr. Kim noted Plaintiff’s symptoms “are alleviated with medications and use
21 of hand braces.” AR 588. As a result of an October 7, 2014 exam, Dr. Kim
22 placed Plaintiff on a work restriction precluding him from push, pulling or
23 lifting more than 10 pounds and from repetitive forceful squeezing and
24 grasping. AR 358.

25 The ALJ accorded “little weight” to the opinions of Drs. Leung and
26 Kim, finding the opinions of both doctors were “not consistent with the entire
27 evidence of record,” noting, among other things, routine and conservative
28 treatment; Plaintiff’s declination of medication; Plaintiff’s reported lack of

1 complaints; and diagnostic and testing results that found “no more than
2 moderate findings.” AR 24-25.

3 Plaintiff argues the ALJ’s assessment “is woefully inadequate and
4 misplaced” in failing to give “appropriate weight” to the “relatively consistent”
5 opinions of Drs. Leung and Kim (and Matiko), asserting their findings were
6 supported by the entire medical record. Jt. Stip. at 7-8. To the extent the ALJ
7 recited conservative treatment as a basis to discount the opinions, Plaintiff
8 cited his “multiple surgical procedures” regarding his “persistent upper
9 extremity issues.” Id. at 6.

10 The Court finds the ALJ properly considered the opinions of Dr. Leung
11 and Dr. Kim in determining Plaintiff’s RFC. First, the ALJ’s discounting the
12 doctors’ opinions because their findings were “not consistent with the entire
13 evidence of record” is supported by the record. AR 24-25. An ALJ is permitted
14 to reject a treating physician’s opinion that is unsupported by the record as a
15 whole. See Batson v. Comm’r of the Soc. Sec. Admin., 359 F.3d 1190, 1195
16 (9th Cir. 2004); see also Shavin v. Comm’r of Soc. Sec. Admin., 488 F. App’x
17 223, 224 (9th Cir. 2012). The ALJ, citing to various portions of the record,
18 found Plaintiff’s diagnostic tests and physical examinations reflected moderate
19 findings that were consistent with Plaintiff’s assessed RFC and not consistent
20 with Drs. Leung and Kim’s severe restrictions. AR 22, 24-25 (citing, *inter alia*,
21 AR, 396, 399, 409, 552-53, 574, 588-89). The medical evidence reveals Plaintiff
22 repeatedly advised medical professionals that he had “no complaints” during
23 visits. See, e.g. AR 396 (notes from December 19, 2014 visit, stating Plaintiff
24 has “[n]o complaints. Would like refills on meds.”); AR 405 (notes from
25 September 15, 2014 visit, stating Plaintiff “[f]eels well with no complaints”).

26 Additionally, the ALJ also properly discounted the opinions of Dr.
27 Leung and Dr. Kim as inconsistent Plaintiff’s routine and conservative
28 treatment. AR 24-25. The ALJ noted: (a) in October 2014, Plaintiff reported he

1 had not undergone any treatment such as diagnostic studies, physical therapy,
2 injections, or surgeries since his previous evaluation over a year earlier (AR 22
3 [citing AR 588-89]); and (b) a November 2014 report in which Plaintiff
4 reported that his right shoulder pain was alleviated with his father's Lidoderm
5 patches, declining further medication (AR 25 [citing AR 399]). Although
6 Plaintiff notes his prior surgeries as evidence of non-conservative treatment, as
7 the Commissioner notes, and as Plaintiff's citation to the record demonstrate,
8 those surgeries took place eleven months or more before the alleged onset date
9 and prior to the opinions rendered by Drs. Kim and Leung. Jt. Stip. at 6, 10.

10 In addition, the ALJ, "[i]n making findings in this case," considered the
11 opinion of the State agency medical consultant and accorded that assessment,
12 which was consistent with the RFC assessed, "great weight." AR 25. An ALJ
13 may consider findings by state-agency medical consultants as opinion
14 evidence. 20 C.F.R. § 404.1527(e). "The opinions of non-treating or non-
15 examining physicians may also serve as substantial evidence when the
16 opinions are consistent with independent clinical findings or other evidence in
17 the record." Thomas v. Barnhart, 278 F.3d 947, 958 (9th Cir. 2002). The ALJ
18 properly relied upon the State agency medical consultant's opinion in
19 according little weight to Drs. Leung and Kim.

20 Here, the ALJ provided a detailed review of the medical evidence,
21 including the opinions of the State agency reviewing physician as well as
22 examining and treating physicians, among other things, in formulating
23 Plaintiff's RFC. AR 20-26. The RFC determination is an "administrative
24 finding" specifically reserved for the Commissioner. See 20 C.F.R.
25 §§ 404.1527(d)(1), (2); 416.927(d)(1), (2) Dominguez v. Colvin, 808 F.3d 403,
26 409 (9th Cir. 2015); Lynch Guzman v. Astrue, 365 F. App'x 869, 870 (9th Cir.
27 2010); Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001) ("It is clear that
28 it is the responsibility of the ALJ, not the claimant's physician, to determine

1 [RFC].”). The ALJ set forth specific and legitimate reasons supported by
2 substantial evidence for discounting significant and probative medical opinions
3 that were more restrictive than the RFC. The ALJ did not err in his
4 consideration of the medical evidence in assessing Plaintiff’s RFC.

5 **B. Subject Symptom Testimony**

6 With respect to Issue No. 2, Plaintiff argues the ALJ “failed to properly
7 consider Plaintiff’s subjective statements of record and testimony regarding his
8 symptoms, and resulting limitations.” Jt. Stip. at 13.

9 1. Applicable Law

10 Where a disability claimant produces objective medical evidence of an
11 underlying impairment that could reasonably be expected to produce the pain
12 or other symptoms alleged, absent evidence of malingering, the ALJ must
13 provide “specific, clear and convincing reasons for rejecting the claimant’s
14 testimony regarding the severity of the claimant’s symptoms.” Treichler v.
15 Comm’r Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th Cir. 2014) (citation
16 omitted); Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004); see also 20
17 C.F.R. § 416.929. The ALJ may consider, among other factors: (1) ordinary
18 techniques of credibility evaluation, such as the claimant’s reputation for lying,
19 prior inconsistent statements, and other testimony by the claimant that appears
20 less than candid; (2) unexplained or inadequately explained failure to seek
21 treatment or to follow a prescribed course of treatment; (3) the claimant’s daily
22 activities; (4) the claimant’s work record; and (5) testimony from physicians
23 and third parties. Rounds, 807 F.3d at 1006. A “lack of medical evidence
24 cannot form the sole basis for discounting pain testimony.” Burch v. Barnhart,
25 400 F.3d 676, 681 (9th Cir. 2005); see also Rollins v. Massanari, 261 F.3d 853,
26 857 (9th Cir. 2001).

27 An ALJ is not “required to believe every allegation” of disability” (Fair
28 v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) and if the ALJ’s assessment of the

1 testimony is reasonable and is supported by substantial evidence, it is not the
2 Court's role to "second-guess" it. See Rollins, 261 F.3d at 857. Finally, the
3 ALJ's credibility finding may be upheld even if not all of the ALJ's reasons for
4 rejecting the claimant's testimony are upheld. See Batson, 359 F.3d at 1197.

5 2. Analysis

6 During the 2017 hearing, Plaintiff described living alone in a two-story
7 house. AR 51. He wore braces on both wrists and testified he "can no longer
8 use" his hands. AR 54. He described "severe swelling" in his right knee, for
9 which he wears a brace, which "makes it feel better." AR 55. He also expected
10 to receive a back brace because he has "severe arthritis in [his] lower back." Id.
11 Plaintiff described driving three times per week to the store, to his parents'
12 house, to the gas station, to church, to doctors' appointments, to a friend's
13 house, and to his girlfriend's house, but he can only drive "for, like, ten
14 minutes as far as distance or [his] hands would fall asleep." AR 55-56, 60.
15 Plaintiff does his own laundry, cooks "quick dinners" like "microwave food"
16 when he is hungry, but does not sweep or mop floors. AR 56-57. He suffers
17 from priapism, which results in a "very painful erection" every day that lasts
18 "for over five hours" and prevents him from wearing clothes. AR 58. Plaintiff
19 has a swimming pool and swims "almost everyday for therapy." AR 60.
20 Plaintiff also cites to written submissions he has made during the "lengthy
21 claims process" describing arthritis, shoulder and wrist impairments, an
22 inability to shave, difficulty putting on shoes, numbness and/or pain in his
23 back and legs. Jt. Stip. at 13 (citing AR 233, 247, 283, 294, 303). Plaintiff
24 reported or confirmed to his doctor on October 30, 2014, November 6, 2014
25 and again on December 9, 2014, that he exercises or does moderate physical
26 activity five days per week and often has more than two alcoholic beverages
27 per day. AR 397, 399-400, 402.

1 The ALJ analyzed Plaintiff's subjective symptoms and the medical and
2 opinion evidence regarding those symptoms in detail in his decision,
3 concluding that, although Plaintiff's "medically determinable impairments
4 could reasonably be expected to cause the alleged symptoms," his "statements
5 concerning the intensity, persistence and limiting effects of these symptoms are
6 not entirely consistent with the medical evidence and other evidence in the
7 record" AR 21.

8 Among other bases, the ALJ found the "medical evidence of record does
9 not support the severity of [Plaintiff's] allegations," citing, among other things,
10 records reflecting Plaintiff's refusal to take medication and having "no
11 complaints," as well as diagnostic testing and exams that revealed only
12 moderate findings. AR 22. Although Plaintiff states in conclusory fashion that
13 the medical evidence reflects impairments that preclude work (Jt. Stip. at 15),
14 Plaintiff, unlike the ALJ, does not cite to evidence in the record other than
15 generic references to opinions of Drs. Leong and Matiko, opinion the Court
16 has already found were properly discounted by the ALJ. The ALJ properly
17 discounted Plaintiff's subjective symptom testimony partly on its inconsistency
18 with the medical evidence of record; however, as noted, that reason cannot be
19 the sole basis for the ALJ's decision.

20 As a second basis the ALJ cited is the "routine and conservative
21 treatment" Plaintiff had undergone since the alleged onset date, citing, among
22 other things: (i) an October 12, 2014 report by Dr. Kim noting Plaintiff had not
23 "undergone any treatment in the form of diagnostic studies, physical therapy,
24 injections, or surgeries" since prior to August 13, 2013, the alleged onset date;
25 and (ii) November 6, 2014 treatment notes indicating Plaintiff "did not want to
26 take any meds." AR 22 (citing AR 399, 588-89). Conservative treatment is a
27 legitimate consideration in evaluating subjective symptoms. See Parra, 481
28 F.3d at 750-51 ("evidence of conservative treatment is sufficient to discount a

1 claimant's testimony regarding severity of an impairment"). As the
2 Commissioner notes, Plaintiff did not, in his portion of the Joint Stipulation,
3 address this basis proffered by the ALJ, and did further did not address it
4 despite an opportunity to reply (see Dkt. 7, ¶ 5(c)) after the Commissioner
5 noted the basis was not addressed. The ALJ's finding regarding conservative
6 treatment was a clear and convincing reason to discount Plaintiff's statements
7 of a disabling condition. See Tommasetti, 533 F.3d at 1040; Fair, 885 F.2d at
8 604 (finding a claimant's allegations of persistent, severe pain and discomfort
9 were belied by conservative treatment); see also Hanes v. Colvin, 651 F. App'x
10 703, 705 (9th Cir. 2016) (credibility determination supported in part by
11 evidence of conservative treatment plan, which consisted primarily of minimal
12 medication, limited injections, physical therapy, and gentle exercise).

13 Third, the ALJ noted instances indicating treatment was generally
14 working, citing November 6, 2014 treatment notes indicating Plaintiff was
15 using his father's Lidoderm patches to alleviate pain and declined further
16 medication and December 9, 2014 treatment notes reflecting Plaintiff had "no
17 complaints" but sought refills on medication. AR 22 (citing AR 396, 399); see
18 also AR 405 (notes from September 15, 2014 medical visit, stating Plaintiff
19 "[f]eels well with no complaints"). As with conservative treatment, Plaintiff
20 does not address the ALJ's statements and supporting evidence on this issue.
21 "Impairments that can be controlled effectively with medication are not
22 disabling." Warre v. Comm'r Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir.
23 2006). The ALJ properly discounted Plaintiff's testimony on this basis. See
24 Lindquist v. Colvin, 588 F. App'x 544, 547 (9th Cir. 2014) (ALJ properly
25 discounted claimant's testimony in part because symptoms were controlled by
26 medication).

27 Fourth, the ALJ cited Plaintiff's "somewhat normal level of activities,"
28 including living alone in a two-story house, driving on a regular basis to the

1 store, his parents' house, the gas station, church, doctors' appointments, and
2 his girlfriend's house, performing household chores, making simple meals, and
3 swimming every day in his own pool, some of which "are the same as those
4 necessary for obtaining and maintaining employment." AR at 19-20. Plaintiff
5 argues that these activities are "not inconsistent" with Plaintiff's symptom
6 descriptions. Jt. Stip. at 15.

7 Although an ALJ may consider "whether the claimant engages in daily
8 activities inconsistent with the alleged symptoms" (Molina, 674 F.3d at 1112),
9 the Ninth Circuit has "repeatedly warned that ALJs must be especially
10 cautious in concluding that daily activities are inconsistent with testimony
11 about pain, because impairments that would unquestionably preclude work
12 and all the pressures of a workplace environment will often be consistent with
13 doing more than merely resting in bed all day." Garrison v. Colvin, 759 F.3d
14 995, 1016 (9th Cir. 2014); Vertigan, 260 F.3d at 1050 ("This court has
15 repeatedly asserted that the mere fact that a plaintiff has carried on certain
16 daily activities, such as grocery shopping, driving a vehicle, or limited walking
17 for exercise, does not in any way detract from her credibility as to her overall
18 disability."). "[O]nly if his level of activity [was] inconsistent with [a
19 claimant's] claimed limitations would these activities have any bearing on his
20 credibility." Garrison, 759 F.3d at 1016.

21 Here, the ALJ properly discounted Plaintiff's testimony that he "can no
22 longer use" his hands, which prevents him from working (AR 54, 57-58), by
23 noting that Plaintiff lives alone in a house, makes simple meals, goes shopping,
24 pumps gas, goes swimming in his own pool every day, regularly drives a car to
25 visit doctors, his parents, a friend, and a girlfriend, among other activities. The
26 ALJ properly noted that many of those activities are consistent with work and
27 are inconsistent with a claim of disability. The ALJ properly discounted
28 Plaintiff's subjective symptom testimony about disabling pain based upon his

1 activities of daily living. See, e.g. Molly C. v. Comm'r of Soc. Sec., 2018 WL
2 6517557, at *4 (W.D. Wash. Oct. 31, 2018) (finding an ALJ properly
3 discounted symptom testimony based on Plaintiff's inconsistent activities of
4 socializing with family and friends, playing cards and board games, swimming,
5 driving herself to medical appointments, and travelling); Goodwin v. Colvin,
6 2014 WL 2472205, at *12 (C.D. Cal. June 3, 2014) (finding an ALJ properly
7 discounted symptom testimony based on Plaintiff's inconsistent activities of
8 swimming three times per week, peddling a bicycle at home, living alone, and
9 driving to the grocery store and doctors' appointments).


10 For the foregoing reasons, the ALJ provided multiple sufficiently
11 specific, clear, and convincing reasons supported by substantial evidence for
12 discounting Plaintiff's symptom testimony.

13 **V.**

14 **ORDER**

15 Pursuant to sentence four of 42 U.S.C. § 405(g), IT THEREFORE IS
16 ORDERED that Judgment be entered affirming the decision of the
17 Commissioner of Social Security.

18
19 Dated: July 05, 2019

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22 JOHN D. EARLY
23 United States Magistrate Judge
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